Ramachandram a/l Appalanaidu & Ors v Gasing Meridian Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO W-02(IM)-1356–06 OF 2013
BALIA YUSOF, ZAKARIA SAM AND UMI KALTHUM JJCA
12 FEBRUARY 2018

Civil Procedure — Judgments and orders — Ex parte stay order — Application to hold inquiry into damages suffered — Application to stay made ex parte and granted — Whether ex parte stay order was in effect and substance, an injunction — Whether injunction directed at party to proceeding — Whether intended to restrain performance of act or conduct — Whether aggrieved party entitled to claim for damages

This was an appeal by the appellants ('the applicants') against the decision of the High Court judge in allowing the respondent/the second respondent's ('the developer') application under O 32 r 6 of the Rules of the High Court 1980 ('the RHC') in encl 26. Enclosure 26 was an application by the developer to, among others, hold an inquiry into damages suffered by the second respondent by reason of the ex parte interim order for stay of proceedings (ex parte stay order) which was continued until it was discharged by the High Court judge. The developer was the registered proprietor of 71 pieces of land located at Bukit Gasing. The developer, with the intention to develop these lands, had applied to the Datuk Bandar for planning permission. The residents, being the owners of the neighbouring properties close to or adjoining to the proposed development opposed the development purportedly on the basis of, amongst others, the unsuitability of the lands for development. The residents then wrote letters demanding the Datuk Bandar to afford them a formal objections hearing before granting the developer a development order. In response to the letters, the Datuk Bandar informed them that a formal objections hearing would not be held as it would contravene existing laws. The residents deemed the Datuk Bandar's letter as a 'decision' that enabled them to commence a judicial review application. The residents applied for and obtained an ex parte leave. At this stage, the developer was not made a party to the first judicial review application and had been granted a development order, the hoarding permit and the earthworks approval by the Datuk Bandar. The developer had commenced works on the development. The residents, in respect of the first judicial review application, applied and obtained the ex parte stay order. The developer then applied for and obtained an order for joinder as the second

respondent to the first judicial review application. The developer then filed encl 26. The residents filed another judicial review application ('the second judicial review application') for an order of certiorari to quash the development order, the hoarding permit and the earthworks approval. The substantive hearing of the first and second judicial review applications were dismissed. The High Court judge allowed the developer's application. Hence, this appeal.

Held, dismissing the appeal:

(1) The ex parte stay order was in effect and substance, an injunction and was suspensory in nature. Meanwhile, an injunction in effect is directed at a party to a proceeding and was intended to restrain the performance of an act or conduct by the other party to a proceeding. The ex parte stay order could not have been applicable to the Datuk Bandar nor could it be directed to suspending the operation of the Datuk Bandar's decision for which the ex parte leave was granted. The ex parte stay order was clearly directed at stopping development works that were to be undertaken by the developer (see paras 28–29).

(2) In view of the nature of an ex parte relief and the possibility of damage being caused to the developer, an undertaking as to damages ought to be given by the applicant of the interim relief. In the absence of such an undertaking, notwithstanding the objection to give any, would not disentitle the aggrieved party to claim for damages. The court retained the power and the discretion to order damages to be assessed by the party affected by the order for interim relief. Thus, the damages, subject to the assessment, were still payable to the developer (see paras 35–37).

[Bahasa Malaysia summary

Ini adalah rayuan perayu-perayu ('pemohon-pemohon') terhadap keputusan hakim Mahkamah Tinggi dalam membenarkan permohonan responden/responden kedua ('pemaju') bawah A 32 k 6 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KKM') dalam lampiran 26. Lampiran 26 adalah berkenaan permohonan oleh pemaju untuk, antara lain, mengadakan siasatan atas ganti rugi yang dialami oleh responden kedua oleh sebab perintah interim ex parte untuk penangguhan prosiding ('perintah penggantungan ex parte') yang berterusan hingga dilepaskan oleh hakim Mahkamah Tinggi. Pemaju adalah pemilik berdaftar 71 bidang tanah yang terletak di Bukit Gasing. Pemaju, dengan niat untuk membangunkan tanah-tanah ini, telah memohon kepada Datuk Bandar untuk mendapatkan kebenaran merancang. Penduduk, sebagai pemilik hartanah berdekatan atau bersebelahan dengan bangunan yang dicadangkan menentang pembangunan tersebut atas alasan, antara lain ketidaksesuaian tanah tersebut untuk pembangunan. Penduduk

kemudian menulis surat menuntut Datuk Bandar untuk memberi mereka pendengaran rasmi sebelum memberi pemaju perintah pembangunan. Sebagai balasan surat-surat tersebut, Datuk Bandar memberitahu mereka bahawa pendengaran bantahan rasmi tidak akan dibuat kerana melanggar undang-undang sedia ada. Penduduk menganggap surat Datuk Bandar sebagai 'keputusan' yang membolehkan mereka memulakan permohonan semakan kehakiman. Penduduk memohon dan mendapatkan kebenaran ex parte. Pada peringkat ini, pemaju belum menjadi pihak dalam permohonan semakan kehakiman pertama dan telah diberikan perintah pembangunan, permit dinding adang dan kelulusan kerja-kerja tanah oleh Datuk Bandar. Pemaju telah memulakan kerja-kerja pembangunan. Penduduk, dalam permohonan semakan kehakiman yang pertama, memohon dan memperoleh perintah penangguhan ex parte. Pemaju kemudian memohon dan memperoleh perintah untuk bergabung sebagai responden kedua dalam permohonan semakan kehakiman yang pertama. Pemaju kemudian memfailkan lampiran 26. Penduduk memfailkan satu lagi permohonan semakan kehakiman ('permohonan semakan kehakiman kedua') untuk perintah certiorari bagi membatalkan perintah pembangunan, permit dinding adang dan kelulusan kerja tanah. Pendengaran substantif permohonan semakan kehakiman pertama dan kedua ditolak. Hakim Mahkamah Tinggi membenarkan permohonan pemaju. Oleh itu, rayuan ini.

Diputuskan, menolak rayuan:

(1) Tuntutan ex parte adalah secara asas dan kandungannya, satu injunksi dan bersifat menggantung. Sementara itu, satu injunksi secara asasnya diarahkan pada pihak dalam prosiding dan bertujuan menghalang pelaksanaan satu perbuatan atau kelakuan oleh pihak yang satu lagi dalam satu prosiding. Tuntutan ex parte tidak mungkin terpakai kepada Datuk Bandar mahupun boleh mengarahkan untuk menggantung operasi keputusan Datuk Bandar yang mana kebenaran ex parte diberi. Perintah penggantungan ex parte jelas diarahkan untuk menghentikan kerja-kerja pembangunan yang akan dilaksanakan oleh pemaju (lihat perenggan 28–29).

(2) Berdasarkan sifat relief ex parte dan kemungkinan kerugian disebabkan oleh pemaju, satu aku janji untuk ganti rugi patut diberi oleh pemohon dalam relif interim. Tanpa aku janji ini, tanpa mengira bantahan untuk memberi apa-apa, tidak akan menghilangkan kelayakan pihak terkilan untuk menuntut ganti rugi. Mahkamah mengekalkan kuasa dan budi bicara untuk memerintahkan ganti rugi untuk ditaksir oleh pihak yang terjejas dengan perintah untuk relif sementara. Oleh itu, ganti rugi,

A tertakluk pada taksiran, masih boleh dibayar kepada pemaju (lihat perenggan 35–37).]

Notes

For cases on judgments and orders in general, see 2(3) *Mallal's Digest* (5th Ed, B 2017 Reissue) paras 5449–5890.

Cases referred to

Eveready Manufacturing (Pte) Ltd v Explast Industries Sdn Bhd [1996] MLJU 576; [1998] 5 CLJ 212, HC (refd)

C *Puah Bee Hong & Anor v Pentadbir Tanah Daerah Wilayah Persekutuan Kuala Lumpur & Anor (Teo Keng Tuan Robert, intervener) and another appeal* [1994] 2 MLJ 601, SC (refd)

Pui Chian Tien v Foi Chaw Leong & Anor [2003] MLJU 845; [2004] 5 CLJ 145, HC (refd)

D *Regina v Inspectorate of Pollution and another, ex parte Greenpeace Ltd* [1994] 1 WLR 570, CA (folld)

Legislation referred to

Rules of the High Court 1980 O 32 r 6

E

Appeal from: Judicial Review No R1-25–38 of 2008 (High Court, Kuala Lumpur)

Malik Imtiaz Sarwar (Balbir Singh, Pavendeep Singh and Ho How Keong with F *him) (Najiana Wan Balbir) for the appellants.*

Joslyne Delano Gooting (RR Sethu and Lum May Lan with her) (ML Lum & Co) for the respondent.

Jason Gopal (ML Lum & Co) watching brief for the Datuk Bandar.

G **Umi Kalthum JCA:**

INTRODUCTION

[1] This was an appeal by the appellants/applicants against the decision of H the learned High Court judge in allowing the respondent's/second respondent's application under O 32 r 6 of the Rules of the High Court 1980 ('the RHC') in encl 26 in respect of prayers (b)–(e).

[2] Enclosure 26 was an application by the respondent/second respondent I to, among others, hold an inquiry into damages suffered by the respondent/second respondent by reason of the ex parte interim order for stay

of proceedings dated 2 April 2008 (ex parte stay order) which was continued until it was discharged by the learned High Court Judge Justice Aziah Ali (as she then was) on 6 September 2010.

[3] For ease of reference, the parties will be referred to as follows:

(a) the applicants/appellants as 'the residents';

(b) the respondent/second respondent as 'the developer'; and

(c) the first respondent in the first judicial review application as 'the Datuk Bandar'.

BACKGROUND FACTS

[4] The developer is the registered proprietor of 71 pieces of land located at Bukit Gasing. The developer, with the intention to develop these lands had applied to the Datuk Bandar for planning permission.

[5] The residents, being the owners of the neighbouring properties close to or adjoining to the proposed development opposed the development purportedly on the basis of, amongst others, the unsuitability of the lands for development.

[6] The residents then individually wrote identical letters all dated 31 May–2 June 2007 demanding the Datuk Bandar to afford them a formal objections hearing before granting the Developer a development order.

[7] In response to the letters, the Datuk Bandar, vide letter dated 31 December 2007 to the residents, informed them that a formal objections hearing would not be held as it would contravene existing laws. The residents deemed the Datuk Bandar's letter dated 31 December 2007 as a 'decision' that enabled them to commence a judicial review application.

[8] A first judicial review application was filed on 11 February 2008 against the Datuk Bandar to quash the purported decision contained in the letter dated 31 December 2007 (the first judicial review application). The residents applied for and obtained an ex parte leave on 17 March 2008. The hearing of the substantive application of the first judicial review application was scheduled on 23 April 2008.

[9] It is essential to note that at this stage, the developer was not made a party

to the first judicial review application. The developer, on the other hand, had been granted a development order dated 2 October 2007 ('development order'), the hoarding permit dated 16 November 2007 ('hoarding permit') and the earthworks approval dated 31 March 2008 ('earthworks approval') by the Datuk Bandar. The developer had commenced works on the development by erecting the perimeter fencing and hoarding to the subject lands.

[10] The residents, in respect of the first judicial review application, applied and obtained the ex parte stay order (the subject matter of this appeal) on 2 April 2008. An excerpt of the order is reproduced as follows:

> ADALAH DIPERINTAHKAN bahawa satu Perintah Interim untuk menggantung semua tindakan selanjutnya kononnya berdasarkan dua (2) kelulusan (approvals) yang bertarikh 2 Oktober 2007 (ref no (185) dlm DBKL.JPRB.5114/77PT.1) dan 16 November 2007 (ref no BGN BS S1 2007 SEM 6) sehingga pendengaran penuh permohonan inter-partes yang telah ditetapkan pada 23 April 2008 dalam prayer 2 dan 3 di Kandungan 1 didengari oleh Mahkamah ini DAN AKHIRNYA DIPERINTAHKAN bahawa kos permohonan ini adalah kos dalam kausa.

[11] The developer then applied for and obtained an order on 11 April 2008 for joinder as the second respondent to the first judicial review application. Thereafter, the developer filed the summons dated 15 April 2008 under O 32 r 6 of the RHC (application to discharge the ex parte stay order) (encl 26).

[12] The High Court proceeded to hear the first judicial review application on 25 April 2008 but in respect of the residents' application to extend the ex parte stay order. The proceeding, however, was commenced but not completed. The residents had contended that they only became aware of the existence of the development order, the hoarding permit and the earthworks approval on 16 April 2008 through the developer's affidavit affirmed by Tan Yit Chong on 15 April 2008 (encl 29).

[13] Realising that the ex parte order for leave was sought and obtained on the basis of the first judicial review application statement (review statement) dated 11 February 2008 (encl 2) in respect of a specific challenge to the Datuk Bandar's letter dated 31 December 2007, the residents then filed an application to amend the review statement (amendment application) to enable the residents to apply for certiorari to quash the development order, the hoarding permit and the earthworks approval.

[14] The residents, without proceeding with the hearing of the amendment

application or with the continued hearing to extend the ex parte stay order, filed another judicial review application (second judicial review application). A

[15] The second judicial review application was essentially filed for an order of certiorari to quash the development order, the hoarding permit and the earthworks approval. B

[16] The leave application for the second judicial review application was heard before Justice Lau Bee Lan without disposing off the pending amendment application and the substantive hearing of the first judicial review application. C

[17] The leave to apply for the second judicial review was granted by Justice Lau Bee Lan on 24 April 2009. The decision was then affirmed by the Court of Appeal and the leave to appeal to the Federal Court against the granting of the leave was dismissed. D

[18] The substantive hearing of the first and second judicial review applications were then heard before Justice Aziah Ali on 6 September 2010 who dismissed the first and the second judicial review applications with costs, discharged the ex parte stay order and directed that the issue of whether the residents be ordered to pay damages be dealt with after the disposal of the residents' appeal against the High Court judge's decision. E

[19] The residents then filed an appeal against Justice Aziah Ali's decision against the dismissal of the first and second judicial review applications and the appeals were dismissed by the Court of Appeal on 6 March 2012 and the leave to appeal to the Federal Court was dismissed on 2 October 2012. F

[20] Thus, upon the direction of Justice Aziah Ali after she delivered the High Court decision, the outstanding issues in respect of prayers (b), (c), (d) and (e) to the summons dated 15 April 2008 (encl 26) being the subject matter of this appeal were set for hearing. Enclosure 26 prayer (b) prayed for an enquiry to be held into damages suffered by the developer by reason of the said ex parte stay order. G H

[21] Enclosure 26 was heard before Justice Zaleha Yusof (the learned High Court judge) (as she then was) and prayers (b) to (e) of the same were allowed.

AT THE HIGH COURT I

[22] The residents, in opposing the developer's encl 26, contended that the

developer was estopped from seeking the court to hear this application as the merits of the second judicial review application had been decided up to the Federal Court; there was delay on the developer's part in filing encl 26. In addition to that, the residents also argued that the issues brought up in encl 26 were never before the High Court judge in the previous judicial review applications, and were never before the Court of Appeal and the Federal Court and thus, the developer must be estopped from raising it now.

[23] The residents further contended that the ex parte stay order was not an injunction order and the developer was not entitled to seek any damages arising out of that order.

[24] The learned High Court judge, in allowing the developer's application, observed as follows:

(a) between the period of 23 April 2008 (the hearing date of the first judicial review application) until 6 September 2010 (the date of the decision of the two judicial review applications), the ex parte stay order was continued by consent of the parties with an express reservation of the rights of the developer;

(b) Justice Aziah Ali, in delivering her judgment, had ordered the discharge of the ex parte stay order and reserved the issue of the consequential orders prayed for in encl 26 application to be dealt with after the appeals by the residents had been exhausted. Therefore, the developer was not estopped from asking the court to hear encl 26;

(c) the developer was never a party to the first judicial review application until after the ex parte stay order was applied and granted by the court;

(d) the subject matter of the ex parte stay order was in respect of the development works that were to be undertaken by the developer and thus the learned High Court judge was of the view that there was nothing for the Datuk Bandar to do or refrain from doing under the first judicial review application which was capable of a stay;

(e) the learned High Court judge also observed that the granting of an ex parte order that may adversely affect the rights of either the third party or other parties to the proceedings are not unusual in law and thus there is a practice for such an undertaking as to damages to be given by the applicant for interim relief and the absence of such undertaking does not make the order irregular or liable to be set aside (the cases of *Pui Chian Tien v Foi Chaw Leong & Anor* [2003] MLJU 845; [2004] 5 CLJ 145 and *Eveready Manufacturing (Pte) Ltd v Explast Industries Sdn Bhd* [1996] MLJU 576; [1998] 5 CLJ 212 were referred to by the learned

judge for this proposition); and

(f) the learned High Court judge further decided that the court retained the power and the discretion to order damages to be assessed by the party affected by the order for interim relief.

THE APPEAL

[25] The appeal before us now concerned two main issues and they are as follows:

(a) whether the ex parte stay order was in effect an injunction? and

(b) whether damages are payable even though the appellants had refused to give any undertaking to pay damages?

Whether the ex parte stay order was in effect an injunction

[26] The residents' main contention in relation to the first issue was that the first judicial review application was premised on the reason that the residents had not been allowed to state their objections before the Datuk Bandar made his decision to approve the two development orders. It was on this aspect that the ex parte stay order was granted against the Datuk Bandar and for all intents and purposes, it was intended to suspend the decision of the Datuk Bandar pending the outcome of the first judicial review application and it could not be construed as an injunction.

[27] The residents also argued that the relief of a stay of proceedings was a distinct and separate remedy from that of the injunctive relief. The ex parte stay order was granted without any undertaking as to damages and further, it was obtained against the first respondent, that is, the Datuk Bandar, not the developer.

[28] We were of the view that the ex parte stay order was in effect and substance, an injunction. It is essential to note that the effect of a stay is suspensory in nature and it has the effect of suspending a proceeding until the stay is discharged pending the disposal or the hearing of some other substantive proceeding. It is directed at the decision maker, a court or a tribunal. Meanwhile, an injunction in effect is directed at a party to a proceeding and is intended to restrain the performance of an act or conduct by the other party to a proceeding. The Supreme Court in *Puah Bee Hong & Anor v Pentadbir Tanah Daerah Wilayah Persekutuan Kuala Lumpur & Anor (Teo Keng Tuan Robert, intervener) and another appeal* [1994] 2 MLJ 601, per Peh Swee Chin SCJ (delivering the judgment of the court) (as he then was), held, at p 609 as follows:

Again an order for staying proceedings or for staying the execution of an order of a lower court or an inferior tribunal (viz one of those public authorities or bodies exercising judicial or quasi-judicial functions or otherwise deemed to be acting judicially and amenable to the High Court's supervision either by way of appeal or judicial review), is not an injunction, not only in name, but also for some distinctive dissimilarities which are well indicated in a passage from Nelson's *Law of Injunctions* (3rd Ed) as follows:

> An order of stay in an execution matter is in the nature of a prohibitory order and is addressed to the court that is carrying out execution. It is not of the same nature as an order allowing an appeal and quashing executions proceedings. That kind of order takes effect immediately it is passed, for such an order takes away the very jurisdiction of the court executing the decree as there is nothing left to execute thereafter. But a mere order of stay of execution does not take away the jurisdiction of the court. All that it does is to prohibit the court from proceeding with the execution further, and the court unless it knows of the order cannot be expected to carry it out. Therefore, till the order comes to the knowledge of the court its jurisdiction to carry on execution is not affected by a stay order which must in the very nature of things be treated to be prohibitory order directing the executing court which continues to have jurisdiction to stay its hand till further orders. It is clear that as soon as a stay order is withdrawn, the executing court is entitled to carry on execution and there is no question of fresh conferment of jurisdiction by the fact that the stay order has been withdrawn. The jurisdiction of the court is there all along. ... *In effect, therefore, a stay order is more or less in the same position as an order of injunction with one difference. An order of injunction is generally issued to a party and it is forbidden from doing certain acts.* It is well settled that in such a case the party must have knowledge of the injunction order before it could be penalized for disobeying it. Further it is equally well settled that the injunction order not being addressed to the court, if the court proceeds in contravention of the injunction order, the proceedings are not a nullity. In the case of a stay order, as it is addressed to the court, and prohibits it from proceeding further, as soon as the court has knowledge of the order it is bound to obey it and if it does not, it acts illegally, and all proceedings taken after the knowledge of the order would be a nullity. That is the only difference between an order of injunction to a party and an order of stay to a court. (Emphasis added.)

[29] On analysis and true construction of the ex parte stay order, we found that it could not have been applicable to the Datuk Bandar nor could it be directed to suspending the operation of the Datuk Bandar's decision dated 31 December 2007 for which the ex parte leave was granted on 17 March 2008. The ex parte stay order was clearly directed at stopping development works that were to be undertaken by the developer.

[30] We observed from the outset that the residents' intention had always been to prevent and/or restrain the developer from carrying out its development works on the lands in furtherance of the development order and the hoarding permit that had been issued earlier by the Datuk Bandar.

[31] We agreed with the learned High Court judge when she referred to the Court of Appeal of England's case of *Regina v Inspectorate of Pollution and another, ex parte Greenpeace Ltd* [1994] 1 WLR 570 for the proposition that the court, in considering whether to grant the stay, should look to the substance rather than the form of the application and apply the same principles as would have been applicable if the application had been for an interlocutory injunction. Glidewell LJ, at p 573 and Scott LJ, at p 576, stated as follows:

Per Glidewell LJ:

> That then, however, raised for the judge this difficult question, on which, so far as I know, there is no authority: where it is sought to stay a decision of a government department, and the effect of granting the stay will be to affect detrimentally the operations of a third party who are not parties to the proceedings, what is the proper approach for the court, from which the stay is sought, to adopt?
>
> If the third parties are made third parties to the proceedings, as they could be, and if an interlocutory injunction were sought against them, then the answer to the question would be clear: the court would then apply the normal principles it applies when an interlocutory injunction is sought, those laid down in *American Cyanamid Co v Ethicon Ltd* [1975] AC 396.
>
> In this case that did not happen because BNFL were not made parties and no interlocutory injunction has been sought against them. It is quite clear, in my view, that Brooke J treated this application for a stay, in a sense, as if it were an application for an interlocutory injunction against BNFL, and he applied the principles he would have applied had he been considering such an application. In my judgment, he was entirely right to do so. *If a third party would be affected by a decision on an application for a stay but is not made a party to the proceedings as a respondent to an application for an injunction, then, in my view, nevertheless, the same principles should be followed.*

Per Scott LJ:

> In my opinion, if the real purpose of interlocutory relief in a judicial review case is to prevent executive action by a third party being carried our pursuant to the decision under attack, the more suitable procedure would be to have the third party in question joined and then to seek an interlocutory injunction against that party rather than to seek a stay of the decision. If, however, the purpose is pursued as it has been in the present case by an application for a stay of the decision rather than by an application for an interlocutory injunction against the third party, the courts should, in my opinion, look to the substance rather than to the form, and apply the same principles to the application as would have been applicable had the application been for an interlocutory injunction. (Emphasis added.)

[32] Thus, it is clear from the above authorities that this court must look at the substance rather than to the form and the ex parte stay order was in effect

A and in substance an injunction as it was intended to restrain the developer from proceeding with any development works on the said lands.

Whether damages are payable even though the residents/appellants had refused to give any undertaking to pay damages

B

[33] The residents had been adamant with their contention that they had at all times expressly refused to give any undertaking to pay damages when the developer's counsel had requested for a cross undertaking as it was the residents' contention all along that this was a stay order pending a judicial review.

C

[34] The residents contended that no undertaking as to damages can be implied or imposed on them as the residents had expressly objected to giving such undertaking. The residents further contended that the developer was estopped from seeking any damages now as the respondent ought to have encl 26 heard immediately upon the refusal of the residents to give an undertaking.

D

[35] With respect, we found the residents' arguments to be misconceived. The law, although permitting interim relief to be applied ex parte, is silent as to whether an undertaking to damages ought to be provided in the usual course in applying for an interim relief. But, in view of the nature of an ex parte relief and the possibility of damage being caused to the other party, in this case being the developer, an undertaking as to damages ought to be given by the applicant of the interim relief. We were of the view that in the absence of such an undertaking, notwithstanding the objection to give any, would not disentitle the aggrieved party to claim for damages.

E

F

[36] We also agreed with the learned High Court judge that in the absence of an undertaking, the court retained the power and the discretion to order damages to be assessed by the party affected by the order for interim relief.

G

[37] Thus, despite the objections of the learned counsel for the residents, the damages, subject to the assessment, are still payable to the developer.

H

CONCLUSION

[38] Based on the aforesaid reasons, we found no merit in this appeal and we unanimously dismissed the appeal with costs of RM7,000 and ordered the deposit to account of costs.

I

Appeal dismissed.

Reported by Afiq Mohamad Noor